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Applicant Name:	Bell Atlantic				
Proceeding Name:	98-148	Author Name:	Leslie Vial	15300809	
Lawfirm Name:					
Contact Name:	applicant_name	Contact Email:			
Address Line 1:	1320 North Court House Road				
Address Line 2:	8th Floor				
City:	Arlington	State:	VA		
Zip Code:	22201	Postal Code:			
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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	IB Docket No. 98-148
Reform of the International Settlements	)	
Policy and Associated Filing Requirements	)	
	)	
Regulation of International	)	CC Docket No. 90-337
Accounting Rates	)	

COMMENTS OF BELL ATLANTIC[1]

BACI and NLD (jointly, "Bell Atlantic") support the Commission's efforts to eliminate or modify regulations that are no longer necessary in the public interest as a result of meaningful economic competition, pursuant to 47 U.S.C. §161. Many of the Commission's proposals to reform the International Settlements Policy ("ISP") are consistent with 47 U.S.C. §161 and should be adopted. In a few instances, however, the Commission's proposals to eliminate particular requirements could affirmatively impede the development of competition. Those proposals should be modified to ensure that new and recent entrants are not foreclosed from competing.

I. The Commission Should Not Apply The ISP To Agreements With Foreign Carriers That Lack Market Power In The Foreign Market.

As the Commission notes, there is little danger that a foreign carrier that lacks market power in the destination market will have the ability adversely to affect competition for international telecommunications services in the United States. As a

[1] These comments are filed on behalf of Bell Atlantic Communications, Inc. ("BACI") and NYNEX Long Distance Company ("NLD") who are U.S. certified

result, there is no reason to apply the ISP to agreements between U.S. carriers and foreign carriers in WTO member countries that lack market power. NPRM, ¶ 20.

The Commission also should exempt U.S. carriers from filing contracts and accounting rate information under sections 43.51 and 64.1001 of the Commission's rules for arrangements with foreign carriers that lack market power. As the Commission notes, little purpose would be served by continuing these requirements, since they were designed to enable the Commission to enforce the ISP and to maintain regulatory oversight of accounting rate agreements. With the proposal to eliminate oversight of agreements with carriers that lack market power, the reason for these requirements ceases to exist. NPRM, ¶ 21.

The Commission should continue to make the determination whether a foreign carrier lacks market power. *See* NPRM, ¶ 23. Where the Commission already has made such a determination – in another context or based on a prior request not to apply the ISP to a particular arrangement – there should be no further requirement to file contracts or accounting rate information under sections 43.51 and 64.1001. Where the Commission has not made such a determination, the U.S. carrier should identify the foreign carrier and submit information showing that the foreign carrier lacks market power in the destination market. To the extent the supporting information is proprietary, the U.S. carrier should be allowed to seek confidential treatment. There should be no requirement to file the arrangement itself unless the Commission determines that the foreign carrier does have market power.

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international carriers that provide service outside the territories served by their local exchange carrier affiliates.

II. The Commission Should Modify Its Proposals Concerning Application Of The ISP In Liberalized Markets To Ensure That Recent and New Entrants Have An Opportunity To Compete.

The Commission's proposal not to apply the ISP to arrangements with foreign carriers – even those that possess market power – on routes where the Commission has already authorized international simple resale also makes sense. NPRM, ¶ 27. As the Commission notes, where the conditions for international simple resale are met, there is a reduced threat that U.S. consumers will be injured as a result of allowing U.S. carriers to enter into alternative settlement agreements with foreign carriers. *See id.*

Where a foreign carrier has market power in the destination market, however, there is still a danger that it could whipsaw U.S. carriers or that it could enter into arrangements that would effectively preclude new and recent entrants from being able to compete for traffic on that route. *See* NPRM, ¶¶ 30, 40-42. This is true whether or not the foreign carrier with market power is affiliated with the U.S. carrier involved in the arrangement. Accordingly, the Commission should retain the No Special Concessions rule and the filing requirements in sections 43.51 and 64.1001 in these circumstances to ensure that real competition has a chance to develop.

Exclusive arrangements between existing major U.S. carriers and foreign carriers with market power could adversely affect competition in the U.S. market on routes where ISR is permitted because they could have the effect of "freezing out" new and recent entrants – preventing them from reaching agreements with the dominant (and perhaps only) foreign carrier in a particular market.[2] Elimination of the No Special Concessions

[2] Since international simple resale is permitted under the Commission's rules where the destination country offers equivalent resale opportunities, or where 50 percent

rule, therefore, could allow the incumbent major long distance carriers providing international telecommunications services to impede the development of additional competition for their services.

Consequently, the Commission should modify its proposal concerning arrangements with foreign carriers with market power in liberalized markets to maintain the No Special Concessions rule in these circumstances. The Commission also should adopt its tentative conclusion that the No Special Concessions rule does not apply to the terms and conditions under which traffic is settled, including allocation of return traffic, by a U.S. carrier on an international simple resale route, but that it does prohibit exclusive arrangements with a foreign carrier with market power with respect to interconnection of international facilities, private line provisioning and maintenance, and quality of service. NPRM, ¶ 41.

In order to oversee the application of the No Special Concessions rule and as an added safeguard against anticompetitive arrangements between existing U.S. carriers and foreign carriers with market power, the Commission should retain its filing requirements in sections 43.51 and 64.1001 where the foreign carrier has market power. Arrangements between U.S. carriers and foreign carriers with market power in the destination market should continue to be filed publicly, whether or not the foreign carrier is an affiliate of the U.S. carrier.

Finally, the Commission should not single out one group of U.S. carriers for different treatment. The Commission has determined that BACI, NLD, and other similar

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of the traffic on the route is settled at or below benchmark rates, 47 C.F.R. §63.18(e)(4), it is possible that competitive alternatives to the dominant foreign carrier do not exist in

companies are non-dominant for the provision of both in-region and out-of-region long distance services, including international telecommunications services.[3] There is no reason to create a special class of non-dominant carriers and subject them to different regulatory requirements than other non-dominant carriers. *See* NPRM, ¶ 43.

III. If The Commission Continues To Apply The ISP To Arrangements With Foreign Carriers That Lack Market Power, It Should Adopt Its Proposed Revisions To The Flexibility Policy.

If the Commission adopts the proposals to lift the ISP, as discussed above, which it should, the flexibility rules concerning alternative settlement arrangements become irrelevant, since those rules provide an exception to the ISP. NPRM, ¶ 36. If the Commission does not adopt its proposals concerning the ISP, however, the proposed revisions to the flexibility policy will encourage carriers to negotiate alternative settlement arrangements and should be adopted.

The Commission should retain the safeguards for application of the flexibility policy, but should modify the safeguard that requires the public filing of alternative settlement arrangements between a U.S. carrier and that carrier's foreign affiliate or joint venture partner as proposed. Where the foreign affiliate or joint venture partner lacks

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the destination market.

[3] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756 (1997); *Bell Atlantic Communications, Inc. Application for Global Authority to Provide Facilities-based Switched, Private Line, and Data Services between the United States and International Points*, 12 FCC Rcd 1880 (1997); *NYNEX Long Distance Company Application for Authority to Provide International Services from Certain Points Within the United States to Gibraltar through the Resale of International Switched Services*, 12 FCC Rcd 24219 (1997); *NYNEX Long Distance Co. Application for Authority to Provide International Services from Certain Parts of the United States to International Points through the Resale of International Switched Services*, 11 FCC Rcd 8685 (1996).

market power in the destination market, there is little danger that an alternative settlement arrangement would have anticompetitive effects. NPRM, ¶ 34. Accordingly, there is no reason to require the arrangement to be filed, and eliminating the requirement is consistent with 47 U.S.C. §161.

CONCLUSION

The Commission should adopt its proposals to lift the ISP and eliminate filing requirements for arrangements between U.S. carriers and foreign carriers from WTO member countries that lack market power in the destination market. Where the foreign carrier possesses market power, however, the Commission should retain the No Special Concessions Rule and the filing requirements in sections 43.51 and 64.1001. If, however, the Commission does not adopt its proposals to lift the ISP, it should revise the flexibility policy as proposed to encourage carriers to negotiate alternative settlement arrangements.

Respectfully submitted,

Edward D. Young, III
Michael E. Glover
Of Counsel

Leslie A. Vial
Stephen E. Bozzo
1320 North Courthouse Road
8th Floor
Arlington, VA 22201
(703) 974-2819

Attorneys for Bell Atlantic Communications, Inc. and NYNEX Long Distance Company

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